

Item SPR06-34 Response Form

Title: Trial Court Administration: Authority and Duties of Presiding Judge (amend Cal. Rules of Court, rule 6.603(c))

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*

Invitations to Comment SPR06-34

Title	Trial Court Administration: Authority and Duties of Presiding Judge (amend Cal. Rules of Court, rule 6.603(c))
Summary	The proposed amendment to rule 6.603(c) would require presiding judges to monitor petitions for writ of habeas corpus to ensure that the petitions are ruled on within 60 days as required by rule 4.551(a)(3) of the California Rules of Court.
Source	Task Force on Judicial Ethics Issues
Staff	Mark Jacobson, Attorney, 415-865-7898, mark.jacobson@jud.ca.gov
Discussion	<p>The Commission on Judicial Performance (CJP) has noticed an increase in the number of matters involving delays in ruling on petitions for writ of habeas corpus. During its investigation of such delays, the CJP has learned that some courts have no system for monitoring the petitions and that deadlines for action have passed unnoticed because the petitions themselves have not been tracked.</p> <p>Rule 6.603(c)(3) requires presiding judges to supervise and monitor the number of causes under submission and to see that all submitted causes are decided within 90 days. To assist the presiding judge in accomplishing this goal, the rule provides that the presiding judge shall require each judge to report to the presiding judge all causes under submission for more than 30 days, and to designate whether they have been under submission for 30 through 60 days, 61 through 90 days, or for over 90 days. The presiding judge must compile a list of all causes under submission and circulate it monthly to each judge in the court.</p> <p>Rule 4.551 of the California Rules of Court (attached for reference at pages 8–11) states that a court must rule on a habeas petition within 60 days after it is filed. It provides that upon filing of a petition, the court clerk must immediately deliver the petition to the presiding judge or his or her designee. If the court does not rule within 60 days, the petitioner may file a “notice and request for ruling.” If the notice is complete and accurately states that a ruling has not been issued within 60 days, the presiding judge or the designee must assign the petition to a judge and calendar it for a decision within 30 days.</p> <p>There is no rule that requires a presiding judge to monitor habeas petitions. The current requirements of rule 6.603(c)(3) discussed above do not cover habeas petitions because these petitions are not</p>

submitted causes. A rule provision requiring presiding judges to monitor habeas petitions, added in this proposal as a new paragraph (4) in subdivision (c), would promote the prompt disposition of these petitions.

Because all habeas petitions are forwarded to the presiding judge or his or her designee, it seems unnecessary to include in the proposed amended rule a detailed monitoring scheme like the one found in rule 6.603(c)(3). That monitoring scheme exists because any judge in the court may have a submitted cause, but the presiding judge may not be aware of all the submitted causes pending throughout the court. The detailed procedure in rule 6.603(c)(3) provides a mechanism to assist the presiding judge in monitoring submitted causes. By contrast, the rule 4.551 requirements make it much easier for a presiding judge to track habeas petitions because the presiding judge or his or her designee should be aware of all such pending petitions. Thus, there is no need to require a presiding judge to compile and circulate a list of pending habeas petitions. The less-detailed requirements of proposed rule 6.603(c)(4) (monitoring habeas petitions) would be less of a burden than those contained in (c)(3) (monitoring submitted causes). This would also offer the presiding judge more flexibility and discretion in determining how to monitor the petitions.

Because presiding judges already are responsible for monitoring submitted causes, it does not seem unduly burdensome to require them to monitor habeas petitions. Furthermore, adoption of the proposed rule amendments (attached at pages 3–7) would promote compliance with rule 4.551 by facilitating the prompt disposition of habeas petitions. The remaining paragraphs in rule 6.603(c) would be renumbered to reflect new paragraph (4). In addition, throughout subdivision (c), technical changes would be made to replace “shall” to implement the Judicial Council’s policy as reflected in the Introductory Statement to the California Rules of court.

Attachment

Rule 6.603 of the California Rules of Court would be amended, effective January 1, 2007, to read:

Rule 6.603. Authority and duties of presiding judge

(a)–(b) * * *

(c) [Duties]

(1)–(2) * * *

(3) *(Submitted cases)* The presiding judge ~~shall~~ must supervise and monitor the number of causes under submission before the judges of the court and ensure that no cause under submission remains undecided and pending for longer than 90 days. As an aid in accomplishing this goal, the presiding judge ~~shall~~ must:

- (A) Require each judge to report to the presiding judge all causes under submission for more than 30 days, and with respect to each cause, designate whether it has been under submission for 30 through 60 days, 61 through 90 days, or for over 90 days;
- (B) Compile a list of all causes under submission before judges of the court which ~~shall~~ will be designated as the submitted list and which ~~shall~~ must include the name of each judge, a list of causes under submission before that judge, and the length of time each cause has been under submission;
- (C) Circulate monthly a complete copy of the submitted list to each judge of the court;
- (D) Contact and alert each judge who has a cause under submission for over 30 days and discuss ways to ensure that the cause is timely decided;
- (E) Consider providing assistance to a judge who has a cause under submission for over 60 days; and
- (F) Consider requesting the services of the Administrative Office of the Courts to review the court's calendar management procedures and

1 make recommendations whenever any of the following conditions
2 exist in the court for the most recent three months:

3
4 (i) More than 90 civil active cases are pending for each judicial
5 position; or

6
7 (ii) More than 10 percent of the cases on the civil active list have
8 been pending for one year or more.

9
10 (4) (*Monitoring habeas petitions*) The presiding judge must supervise and
11 monitor petitions for writ of habeas corpus filed with the court to promote
12 compliance with rule 4.551(a)(3).

13
14 (45) (*Oversight of judicial officers*) The presiding judge ~~shall~~ must:

15
16 (A) [Judges] Notify the Commission on Judicial Performance of

17
18 (i) A judge's substantial failure to perform judicial duties,
19 including but not limited to any habitual neglect of duty,
20 persistent refusal to carry out assignments as assigned by the
21 presiding judge, or persistent refusal to carry out the directives
22 of the presiding judge as authorized by the rules of court; or

23
24 (ii) Any absences caused by disability totaling more than 90 court
25 days in a 12-month period, excluding absences authorized
26 under subdivision (c)(2) of this rule.

27
28 (B) [Notice] Give the judge a copy of the notice to the commission
29 under subdivision (A) if appropriate. If a copy is not given to the
30 judge, the presiding judge ~~shall~~ must inform the commission of the
31 reasons why so notifying the judge was deemed inappropriate;

32
33 (C) [Commissioners] Prepare and submit to the judges for consideration
34 and adoption procedures for receiving, inquiring into, and resolving
35 complaints lodged against court commissioners and referees,
36 consistent with rule 6.655;

37
38 (D) [Temporary judges] Be responsible for the recruitment, training,
39 supervision, approval, and performance of temporary judges; and

40
41 (E) [Assigned judges] For each assigned retired judge,

42
43 (i) Complete a confidential evaluation form;

(ii) Submit the form annually to the Administrative Director of the Courts;

(iii) Direct complaints against the assigned judge to the Chief Justice, by forwarding them to the attention of the Administrative Director of the Courts, and provide requested information in writing to the Administrative Director of the Courts in a timely manner; and

(iv) Assist the Administrative Director in the process of investigating, evaluating, and making recommendations to the Chief Justice regarding complaints against retired judges who serve on assignment.

(56) (*Personnel*) The presiding judge ~~shall~~ provides general direction to and supervision of the court executive officer, or, if the court has no executive officer, perform the duties of the court executive regarding personnel as specified in rule 6.610(c)(1).

(67) (*Budget and fiscal management*) The presiding judge ~~shall~~ must:

(A) Establish a process for consulting with the judges of the court on budget requests, expenditure plans, and other budget or fiscal matters the presiding judge deems appropriate;

(B) Establish responsible budget priorities and submit budget requests that will best enable the court to achieve its goals; and

(C) Approve procurements, contracts, expenditures, and the allocation of funds in a manner that promotes the implementation of state and local budget priorities and that ensures equal access to justice and the ability of the court to carry out its functions effectively. In a court with an executive officer, the presiding judge may delegate these duties to the court executive officer, but the presiding judge ~~shall~~ must ensure that the court executive officer performs such delegated duties consistent with the court's established budget.

(78) (*Meetings and committees*) The presiding judge ~~shall~~ must establish a process for consulting with the judges of the court and may call meetings of the judges as needed. The presiding judge may appoint standing and special committees of judges as needed to assist in the proper performance of the duties and functions of the court.

1
2 (89) (*Liaison*) The presiding judge ~~shall~~ must:
3

- 4 (A) Provide for liaison between the court and the Judicial Council, the
5 Administrative Office of the Courts, and other governmental and
6 civic agencies;
7
8 (B) Meet with or designate a judge or judges to meet with any
9 committee of the bench, bar, news media, or community to review
10 problems and to promote understanding of the administration of
11 justice, when appropriate; and
12
13 (C) Support and encourage the judges to actively engage in community
14 outreach to increase public understanding of and involvement with
15 the justice system and to obtain appropriate community input
16 regarding the administration of justice, consistent with the California
17 Code of Judicial Ethics and section 39 of the Standards of Judicial
18 Administration.
19

20 (910) (*Planning*) The presiding judge ~~shall~~ must:
21

- 22 (A) Prepare, with the assistance of appropriate court committees and
23 appropriate input from the community, a long-range strategic plan
24 that is consistent with the plan and policies of the Judicial Council,
25 for adoption in accordance with procedures established by local
26 rules or policies; and
27
28 (B) Ensure that the court regularly and actively examines access issues,
29 including, but not limited to, any physical, language, or economic
30 barriers that impede the fair administration of justice.
31

32 (4011) (*Appellate records*) The presiding judge is responsible for ensuring the
33 timely preparation of records on appeal.
34

- 35 (A) The presiding judge ordinarily should delegate the following duties
36 to the executive officer:
37
38 (i) Maintaining records of outstanding transcripts to be completed
39 by each reporter;
40
41 (ii) Reassigning court reporters as necessary to facilitate prompt
42 completion of transcripts; and
43

1 (iii) Reviewing reporters' requests for extensions of time to
2 complete transcripts in appeals of criminal cases.

3
4 (B) After reasonable notice and hearing, the presiding judge ~~shall~~ must
5 declare any reporter of the court who is delinquent in completing a
6 transcript on appeal not competent to act as a reporter in court, under
7 Government Code section 69944.

8
9 (1112) (*Local rules*) The presiding judge ~~shall~~ must prepare, with the
10 assistance of appropriate court committees, proposed local rules to
11 expedite and facilitate court business in accordance with Government
12 Code section 68071 and rules 981 and 981.1.

13
14 (d) * * *

Rule 4.551 Habeas corpus proceedings

(a) [Petition; form and court ruling]

(1) Except as provided in subdivision (2), the petition must be on the form approved by the Judicial Council, *Petition for Writ of Habeas Corpus* (form MC-275), and must be served as required in Penal Code section 1475.

(2) For good cause, a court may also accept for filing a petition that does not comply with subdivision (a)(1). A petition submitted by an attorney need not be on the Judicial Council form. However, a petition that is not on the Judicial Council form must comply with Penal Code section 1474 and must contain the pertinent information specified in form MC-275, including the information required regarding other petitions, motions, or applications filed in any court with respect to the conviction, commitment, or issue.

(3) (A) Upon filing, the clerk of the court must immediately deliver the petition to the presiding judge or his or her designee. The court must rule on a petition for writ of habeas corpus within 60 days after the petition is filed.

(B) If the court fails to rule on the petition within 60 days of its filing, the petitioner may file a notice and request for ruling.

(i) The petitioner's notice and request for ruling must include a declaration stating the date the petition was filed and the date of the notice and request for ruling, and indicating that the petitioner has not received a ruling on the petition. A copy of the original petition must be attached to the notice and request for ruling.

(ii) If the presiding judge or his or her designee determines that the notice is complete and the court has failed to rule, the presiding judge, or his or her designee, must assign the petition to a judge and calendar the matter for a decision without appearances within 30 days of the filing of the notice and request for ruling. If the judge assigned by the presiding judge rules on the petition prior to the date the petition is calendared for decision, the matter may be taken off calendar.

(4) For the purposes of subdivision (a)(3), the court rules on the petition by:

(A) Issuing an order to show cause under subdivision (c);

(B) Denying the petition for writ of habeas corpus; or

(C) Requesting an informal response to the petition for writ of habeas corpus under subdivision (b).

(5) The court must issue an order to show cause or deny the petition within 45 days after receipt of an informal response requested under subdivision (b) of this rule.

(Subd (a) amended effective January 1, 2004; adopted effective January 1, 1982; previously amended effective January 1, 2002.)

(b) [Informal response]

(1) Before passing on the petition, the court may request an informal response from:

(A) The respondent or real party in interest; or

(B) The custodian of any record pertaining to the petitioner's case, directing the custodian to produce the record or a certified copy to be filed with the clerk of the court.

(2) A copy of the request must be sent to the petitioner. The informal response, if any, must be served upon the petitioner by the party of whom the request is made. The informal response must be in writing and must be served and filed within 15 days. If any informal response is filed, the court must notify the petitioner that he or she may reply to the informal response within 15 days from the date of service of the response upon the petitioner. If the informal response consists of records or copies of records, a copy of every record and document furnished to the court must be furnished to the petitioner.

(3) After receiving an informal response, the court may not deny the petition until the petitioner has filed a timely reply to the informal response or the 15-day period provided for a reply under subdivision (b)(2) has expired.

(Subd (b) adopted effective January 1, 2002.)

(c) [Order to show cause]

(1) The court must issue an order to show cause if the petitioner has made a prima facie showing that he or she is entitled to relief. In doing so, the court takes petitioner's factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if his or her factual allegations were proved. If so, the court must issue an order to show cause.

(2) Upon issuing an order to show cause, the court must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.

(3) An order to show cause is a determination that the petitioner has made a showing that he or she may be entitled to relief. It does not grant the relief sought in the petition.

(Subd (c) adopted effective January 1, 2002.)

(d) [Return] If an order to show cause is issued as provided in subdivision (c), the respondent may, within 30 days thereafter, file a return. Any material allegation of the petition not controverted by the return is deemed admitted for purposes of the proceeding. The return must comply with Penal Code section 1480 and must be served on the petitioner.

(Subd (d) amended effective January 1, 2004; repealed and adopted effective January 1, 2002.)

(e) [Denial] Within 30 days after service and filing of a return, the petitioner may file a denial. Any material allegation of the return not denied is deemed admitted for purposes of the proceeding. Any denial must comply with Penal Code section 1484 and must be served on the respondent.

(Subd (e) amended and relettered effective January 1, 2002; adopted as subd (b) effective January 1, 1982.)

(f) [Evidentiary hearing; when required] Within 30 days after the filing of any denial or, if none is filed, after the expiration of the time for filing a denial, the court must either grant or deny the relief sought by the petition or order an evidentiary hearing. An evidentiary hearing is required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact. The petitioner must be produced at the evidentiary hearing unless the court, for good cause, directs otherwise.

(Subd (f) amended and relettered effective January 1, 2002; adopted as subd (c) effective January 1, 1982.)

(g) [Reasons for denial of petition] Any order denying a petition for writ of habeas corpus must contain a brief statement of the reasons for the denial. An order only declaring the petition to be "denied" is insufficient.

(Subd (g) amended and relettered effective January 1, 2002; adopted as subd (e) effective January 1, 1982.)

(h) [Extending or shortening time] On motion of any party or on the court's own motion, for good cause stated in the order, the court may shorten or extend the time for doing any act under this rule. A copy of the order must be mailed to each party.

(Subd (h) amended and relettered effective January 1, 2002; adopted as subd (f) effective January 1, 1982.)

Rule 4.551 amended effective January 1, 2004; adopted as rule 260 effective January 1, 1982; renumbered as rule 4.500 effective January 1, 2001; previously amended and renumbered effective January 1, 2002.

Advisory Committee Comment (2004)

The court must appoint counsel upon the issuance of an order to show cause. (*In re Clark* (1993) 5 Cal.4th 750, 780 and *People vs. Shipman* (1965) 62 Cal.2d 226, 231-232.) The

Court of Appeal has held that under Penal Code section 987.2, counties bear the expense of appointed counsel in a habeas corpus proceeding challenging the underlining conviction. (*Charlton vs. Superior Court* (1979) 93 Cal.App.3d 858, 862.) Penal Code section 987.2 authorizes appointment of the public defender, or private counsel if there is no public defender available, for indigents in criminal proceedings.